

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 16**

Ennis, TX

Ennis Automotive, Inc.

Employer

and

Case No. 16-RD-1435

Steven R. Lusk, an Individual

Petitioner

and

Union of Needletrades, Industrial and  
Textile Employees, AFL-CIO

Union

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:1/

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and will effectuate the purposes of the Act to assert jurisdiction herein.2/
3. The labor organization involved claims to represent certain employees of the Employer.3/

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.4/
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All production and maintenance employees, including shipping and receiving employees, and plant clericals, employed in the Employer's Ennis, Texas, facility.

**EXCLUDED:** All other employees, including drivers, office and clerical and professional employees, and guards and supervisors, as defined in the Act.

#### **DIRECTION OF ELECTION<sup>5/</sup>**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. In this regard, Section 103.20(c) of the Board's Rules and Regulations, as interpreted by the Board, requires employers to notify the Regional Director at least five full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Failure to do so estops employers from filing objections based on nonposting of the election notice. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as

such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Union of Needletrades, Industrial, and Textile Employees, AFL-CIO, CLC.

#### **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list containing the **full names and addresses** of all eligible voters which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969); and *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, three (3) copies of an election eligibility list containing the names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 16 Regional Office, 819 Taylor Street, Federal Office Building, Room 8A24, Fort Worth, Texas 76102, on or before October 29, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

## **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by November 5, 1999.

**DATED** October 22, 1999, at Fort Worth, Texas.

/s/ Martha Kinard

Martha Kinard, Acting Regional Director  
NLRB Region 16

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1. The Employer and Union timely submitted post-hearing briefs and they have been duly considered.
  2. The parties stipulated, and I find, that Ennis Automotive, Inc., herein Employer, is a Texas corporation, engaged in the business of remanufacturing automotive parts at its facility in Ennis, Texas. During the last 12 months, a representative period, the Employer purchased and received at its Ennis, Texas, facility goods valued in excess of \$50,000 directly from sources located outside the State of Texas.
  3. The parties stipulated, and I find, that the Union is a labor organization within the meaning of the Act.
  4. On December 20, 1996, the Union was certified as the exclusive collective bargaining representative of an appropriate unit of employees. (Case No. 16-RC-9910) The bargaining unit is comprised of about 250 employees. There currently is no collective bargaining agreement between the parties and the parties agreed, by way of stipulation, to exclude drivers, who were included in the prior appropriate unit. The only issues raised at the hearing were the supervisory status of certain employees and the eligibility of a part-time employee. In its brief, the Union refined its issues, limiting them to the supervisory status of employees Alejandro Tello and Steven Lusk and the eligibility of part-time employee Agnes Prda.

The Union asserts that Tello and Lusk are supervisors as defined by Section 2(11) of the Act and should therefore be excluded from any unit found appropriate herein. The Union also urges that Prda is a part-time employee who does not share a

community of interest with bargaining unit employees and should be excluded on that basis. The Employer, on the other hand, argues that Tello and Lusk possess no indicia of supervisory status, share a substantial community of interest with their fellow bargaining unit employees and should be included in any bargaining unit found appropriate. Likewise, the Employer urges that Prda shares a community of interest with bargaining unit employees and should be included in the bargaining unit.

Alejandro Tello has been employed by the Employer since February 9, 1995. From about October 28, 1996 to February 23, 1998, Tello served as a supervisor in the Rotor Department for the Employer. On the latter date, Tello was voluntarily demoted to a Production Specialist position in that department. Production Specialists are higher skilled bargaining unit employee classifications within a department. Persons in that classification generally have more knowledge of the work in their respective work areas and are more skilled and/or experienced than their co-workers within their respective departments. While performing some work in their departments, production specialists walk throughout their respective departments, monitoring the work flow therein. On occasion, Production Specialists may direct the work of employees within their respective departments in order to maintain the work flow within their departments. Tello currently works as a Production Specialist/Stator Winder in the Stator Department. Ray Evaristo supervises all employees in the Stator Department, including Tello.

The record reveals that Tello works alongside fellow department employees and performs the same functions as other Stator Winders. Tello monitors the work flow within the department, a task similarly performed by other Production Specialists. Since February 1998, Tello's name and job classification have been included in updated lists of unit employees that the Employer has provided the Union at collective bargaining sessions. When Tello was a supervisor in the Rotor Department, he was paid a salary. As a Production Specialist, Tello, as are all other unit employees, is hourly paid, albeit a higher rate than other employees within the Stator Department.

The Union's assertion that Tello is a Section 2(11) supervisor is based on record evidence that Tello has held a Monday morning meeting with employees and has distributed payroll checks to employees in the Stator Department. The record is devoid of the content of the Monday morning meeting or whether Tello's distribution of checks to employees was an isolated incident. No details of either event was presented on the record. On another occasion, Tello was seen discussing parts of a twister (a machine within the department) with fellow employees.

Steven Lusk has been employed by the Employer since March 15, 1991. From May 1996 until February 1998, Lusk was admittedly a supervisor receiving a salary. On February 23, 1998, in a cost cutting measure, Lusk, Tello and several other supervisors were demoted into unit positions as hourly wage earners. Lusk subsequently bid for and was awarded the position of Waste Management Coordinator. As Waste Management Coordinator, Lusk is responsible for

maintaining the water treatment facility (taking the water from the cleaning equipment, removing dirt, metals, contaminants from the water, recycling the water or discharging it) and for removing hazardous waste from plant activities and preparing it for proper disposal. Lusk, who is hourly paid, is supervised by Clint Cowen, Vice President of Administrative Affairs. No other employees work with or for Lusk. In said position, Lusk performs the same tasks as his predecessors, who were also bargaining unit employees.

In support of its contention that Lusk is a Section 2(11) supervisor, the Union relies on isolated incidents where Lusk has been observed dealing directly with employees on waste management-related matters. The record does not reveal the content of Lusk's discussions with bargaining unit employees. The Union also argues Lusk has been observed leaving and returning to the facility without clocking out. However, the record reveals that leaving the facility to purchase materials or supplies would be a function performed "on the clock", i.e., without need to clock out when departing or clocking in when returning.

The Union offered no evidence that Tello or Lusk have ever interviewed job candidates, disciplined employees, terminated employees, promoted employees, transferred employees, laid off or rewarded employees or effectively recommended any of these actions.

The Union argues that case law supports a finding of supervisory status when individuals responsibly direct employees by assigning work, citing **DST Industries (DST)**, 310 NLRB 957 (1993) and **Custom Bronze and Aluminum Corp.(CBAC)**, 197 NLRB 397 (1972). In **DST**, the Board found "working leaders" to be supervisors due to the fact that these individuals had responsibility for running the operations in their respective work areas; demonstrating the exercise of independent judgment in performing these tasks including: the responsibility for establishing job priorities, assigning work, approving requests for vacations and time off and effectively recommending employees for hire and layoff. In **CBAC**, the welder scheduled the shop work, assigned employees to perform the work and gave employees their orders. Employees looked to him for instruction and guidance in their work; he reviewed applicant resumes and provided input to management regarding applicants' qualifications. The welder was also consulted by management regarding work-flow issues including the need for overtime, as well as the conduct of employees. Based on these and other facts, the Board found that the welder was a supervisor as defined by Section 2(11) of the Act as he responsibly assigned and directed the work in the shop and exercised the use of independent judgment in fulfilling these responsibilities.

It is the burden of the party seeking exclusion of an employee as a supervisor to present evidence sufficient to establish that status. **Bennett Industries**, 313 NLRB 1363 (1994). In both cases cited by the Union there was sufficient evidence establishing that the employees in question responsibly assigned and directed the work of other employees, exercising independent judgment in performing their tasks.

No direct evidence of Lusk and Tello's supervisory status was presented by the Union in this matter. The only evidence offered by the Union to support the 2(11) authority of Tello was an assertion that he conducted a Monday morning meeting and, on another occasion distributed checks to employees. The state of the record is the same for Lusk. Thus, Lusk has been observed in discussions with employees, but the details of those discussions are not in the record. Without more, there is insufficient evidence to conclude that Lusk's activities establish the exercise of independent judgment. In sum, the evidence falls short of establishing 2(11) status for these employees. Accordingly, I find that the Union has not provided sufficient evidence to establish that Tello or Lusk are supervisors within the meaning of the Act.

In conclusion, there is no dispute that Tello and Lusk are hourly paid and hold positions that are included in the bargaining unit. As bargaining unit employees, they receive the same benefits as other unit employees and interact on a daily basis with unit employees. Accordingly, I find that Tello and Lusk have a community of interest with other bargaining unit employees and are eligible to vote in the forthcoming election.

Agnes Prda has been continuously employed by the Employer since April 12, 1958. From about August 5, 1996 to February 23, 1998, Prda served as a supervisor receiving a salary. On and after February 23, 1998, in a cost cutting measure, Prda was demoted from her supervisory position and was moved into the bargaining unit position of Product Specialist in the Armature Department. In about February 1999, after her 65<sup>th</sup> birthday, Prda requested and was allowed by the Employer to continue to be employed as a Production Specialist on a part-time basis. As a part-time employee, Prda performs the same work as full-time employees in her job classification, but works fewer hours (34 instead of 40 hours per week). Due to her seniority at the facility, Prda continues to receive the highest wage rate of similarly classified employees. In fact, Prda receives a higher hourly wage rate than similarly classified Carlos Garcia, who admittedly has more authority on the job. The record reveals that prior to Prda, another employee (Emil Marusak) in the armature department was allowed to become a part-time employee after his 65<sup>th</sup> birthday. Marusak has since retired.

During past collective bargaining negotiations, the Employer had taken the position that part-time employees be excluded from the bargaining unit. However, the parties never reached agreement on this issue. The Union argues that, based on this bargaining position, Prda should now be excluded from the bargaining unit, while the Employer argues that Prda, a regular part-time employee, should be included in the appropriate bargaining unit based on community of interest principles. Part-time employees, who perform work within the bargaining unit on a regular basis for a sufficient period of time during each week (or other appropriate calendar period) to demonstrate that they have a substantial and continuing interest in the wages, hours, and working conditions of full-time employees in the unit, are included in the bargaining unit. **Fleming Foods**, 313 NLRB 948 (1994); **Pat's Blue Ribbons**, 286

NLRB 918 (1987). Based on the substantial number of hours Prda works per week (about 34 hours), performing the same work alongside full-time unit employees, I find that Prda should be included in the appropriate unit.

5. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

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